

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday, the 8th day of October, 2026.

On June 10, 2026, came the Judicial Ethics Advisory Committee and presented to the Court Opinion 26-1 pursuant to its authority established in this Court's order of April 18, 2019. Upon consideration whereof, the Court approves the opinion as set out below.

Judicial Ethics Advisory Committee Opinion 26-1

Whether a retired judge serving on the judicial recall list may concurrently practice law in the courts of another state.

ISSUE:

May a retired judge receiving retirement benefits under the Judicial Retirement System and serving on the judicial recall list concurrently practice law in the courts of a state other than the Commonwealth of Virginia?

Answer: Yes. Neither the Code of Virginia nor the Canons of Judicial Conduct for the Commonwealth of Virginia (the "Canons") prohibits a retired judge receiving retirement benefits under the Judicial Retirement System and serving on the judicial recall list from concurrently practicing law in the courts of a state other than the Commonwealth of Virginia.

FACTS:

An active circuit court judge contemplating his upcoming retirement wishes to practice law in the courts of a neighboring state during his retirement. The judge is appropriately licensed to practice in the other state. While practicing law in the courts of the other state, the judge would also be receiving retirement benefits under the Judicial Retirement System and serving on the judicial recall list in the Commonwealth of Virginia.

The circuit court judge has asked whether his proposed practice of law in retirement violates the Canons.

DISCUSSION:

The Canons "establish principles for the ethical conduct of justices and judges" and apply to "retired judges and Commissioners who are in recall status." Va. Sup. Ct. R., Part 6, § III, Preamble. The Exceptions to Applicability of the Canons address the applicability of the Canons to retired judges:

The provisions of Code § 51.1-309 and of these Canons apply to retired judges who are subject to recall and to senior judges and senior justices. *Retired judges and retired justices who are not serving as senior judges or senior justices are exempt from Canons 2G, 2N(1) and (3), 2P, 2U(2), and 3G.*

Retired judges and retired justices serving in a senior capacity are exempt from Canon 3G. These Canons do not apply to retired judges who are not subject to recall.

Exception to Applicability 3 (emphasis added).

1. Applicable Canons, Code sections, and standards

Pursuant to the Exception to Applicability cited above, retired judges who are subject to recall are governed by the Canons. Canon 2P, however, provides that “[t]he practice of law by retired judges . . . who are receiving benefits under the Judicial Retirement System is governed by the provisions of the Virginia Code.”

The relevant Code section governing the practice of law by retired judges—also cited in Exception to Applicability 3—provides that no retired judge receiving retirement benefits under the Judicial Retirement System “shall appear as counsel in any case in any court of the Commonwealth.” Code § 51.1-309(A). It does not address the practice of law in courts outside of the Commonwealth.

Code § 17.1-102 provides: “No justice or judge shall, *during his continuance in office*, engage in the practice of law within or without the Commonwealth, or seek or accept any nonjudicial elective office, or hold any other office of public trust, or engage in any other incompatible activity.” (Emphasis added.) The same provision exists in Article VI, § 11 of the Virginia Constitution.

Canon 1C(2), which applies to retired judges subject to recall, provides that “a judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others.” As set forth in the Canon 1C(4)(b) illustration, “[a] judge must not use the judge’s judicial position to gain advantage for anyone or any entity in a civil, criminal, or administrative proceeding.”

Canon 1D(1) requires a judge to “recuse himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.”

Canon 2L(3), which also applies to retired judges subject to recall, requires a judge “to conduct all extrajudicial activities so that they do not: (a) cast reasonable doubt on the judge’s capacity to act impartially; . . . (b) demean the judicial office; or (c) interfere with the proper performance of judicial duties.” Relatedly, Canon 3I provides that a judge may receive compensation for extrajudicial activities. Canon 3I(1) explains, “[c]ompensation may not exceed a reasonable amount but may be commensurate with the judge’s experience.”

2. Analysis

On numerous occasions, the Committee has previously addressed the propriety of extrajudicial activities of full-time judges.¹ The Committee has only twice addressed issues involving retired judges and extrajudicial activities, once relating to fund raising and once relating to service as an administrative hearing officer.² Whether a retired judge serving on the judicial recall list may concurrently practice law in the courts of another state is a question of first impression for the Committee.

Code § 17.1-102 prohibits a judge from practicing law outside of the Commonwealth, but only “during his continuance in office.” Pursuant to Paragraph 19 of the Order of the Supreme Court of Virginia re-establishing the Judicial Ethics Advisory Committee (April 18, 2019), “[t]he Committee may not issue an advisory opinion that interprets any constitutional provision, statute, rule or regulation *that does not relate to judicial ethics.*” (Emphasis added.) In Virginia JEAC

Opinion 22-2 (2023), however, the Committee previously found that “the interpretation and application of Code § 17.1-102 relates to judicial ethics because that statute prohibits judges from engaging in certain activities.”

The Committee is unaware of an advisory opinion interpreting the phrase “during his continuance in office.” A 1972 opinion from the Office of the Attorney General interpreted a prior version of the statute with respect to whether the statute prohibits a retired judge from serving on a historical commission appointed by the county board. 1971-1972 Op. Atty. Gen. 225, 1972 Va. AG LEXIS 124 (Mar. 29, 1972). The Office of the Attorney General determined that the retired judge was not affected by the statute and could serve on the commission, explaining, “The prohibitions contained in the Constitution and Code are applicable only during continuance in office.” *Id.* at *2. This opinion did not address retired judges serving on the judicial recall list.

A 1978 opinion from the Office of the Attorney General, applying an earlier version of the Canons, addressed whether a prior version of Code § 17.1-102 prohibits a retired judge from managing a political campaign, running for public office, or appearing before the General Assembly as a lobbyist. 1978-1979 Op. Atty. Gen. 147, 1978 Va. AG LEXIS 63 (Dec. 27, 1978). The opinion noted that the Canons became effective in the year following the 1972 opinion holding that “prohibitions contained in the Constitution and Code are applicable only during continuance in office.” *Id.* at *6.

As noted above, retired judges subject to recall are governed by the Canons, which, in pertinent part, prohibit a judge who is receiving retirement benefits under the Judicial Retirement System from practicing law *within* the courts of the Commonwealth. No limitations are found restricting the practice of law outside the courts of the Commonwealth.

A 1985 decision from the U.S. Court of Appeals for the Fourth Circuit is consistent with the Committee’s conclusion that § 51.1-309 is inapplicable to whether a retired judge may practice law outside of the Commonwealth. In *Thompson v. Walker*, 758 F.2d 1004 (4th Cir. 1985), the Fourth Circuit held that a prior version of § 51.1-309 did not violate the equal

protection clauses of the United States and Virginia constitutions. Relevant to the present inquiry, the Fourth Circuit found that “[p]ractice in federal courts, *or in the courts of another state* or of the District of Columbia, as far as matters appear to us, would not lead to ineligibility for the pension” under § 51.1-309. *Id.* at 1006 (emphasis added); *see also id.* at 1008 n.8 (“[Virginia] allows a retired judge to litigate in federal courts or those of another state without any diminution in pension payments.”).³ Notably, the *Thompson* court did not address § 17.1- 102 or whether that provision could impose a limitation on retired judges’ practice of law outside the Commonwealth courts.

Accordingly, the Committee is of the opinion that there is nothing in the Canons or the Code prohibiting a retired judge serving on the judicial recall list from practicing law in the courts of another state. In other words, such conduct, by itself, does not violate the Canons or the Code.

CONCLUSION

The Committee finds that under the facts presented, a retired judge receiving retirement benefits under the Judicial Retirement System and serving on the judicial recall list may practice law in the courts of another state without violating the Canons or the Code.

REFERENCES:

Canons of Judicial Conduct for the Commonwealth of Virginia, Preamble, Exception to Applicability 3, Canon 1C(2), Canon 1C(4)(b), Canon 1D(1), Canon 2L(3), Canon 2P, Canon 3I, and Canon 3I(1).

Va. JEAC Op. 99-3 (1999).

Va. JEAC Op. 00-3 (2000).

Va. JEAC Op. 00-9 (2000).

Va. JEAC Op. 17-1 (2017).

Va. JEAC Op. 20-3 (2021).

Va. JEAC Op. 21-1 (2021).

Va. JEAC Op. 22-2 (2023).

Va. Code § 17.1-102.

Va. Code § 51.1-309.

1971-1972 Op. Atty. Gen. 225, 1972 Va. AG LEXIS 124 (Mar. 29, 1972).

1978-1979 Op. Atty. Gen. 147, 1978 Va. AG LEXIS 63 (Dec. 27, 1978).

Thompson v. Walker, 758 F.2d 1004 (4th Cir. 1985).

Chairman of Board of Trustees v. Waldron, 401 A.2d 172, 177 (Md. 1979).

Slagle v. Ross, 125 So. 3d 117, 139-40 (Ala. 2013).

Order of the Supreme Court of Virginia re-establishing Judicial Ethics Advisory Committee (April 18, 2019).

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Teste:



Clerk

FOOTNOTES:

¹ See, e.g., Va. JEAC Op. 00-3 (2000) (opining that a judge may not serve as a member of the board of trustees of a juvenile group home that accepts referrals from courts); Va. JEAC Op. 00- 9 (2000) (opining that a judge may serve as an officer and/or director of a Property Owners Association related to the judge’s residence); Va. JEAC Op. 17-1 (2017) (opining that a judge may serve in an honorary capacity during a local festival and related events sponsored by a community-based non-profit organization, subject to restrictions imposed by the Canons); Va. JEAC Op. 21-1 (2021) (opining that a judge may serve as a member of the judiciary board of a church); Va. JEAC Op. 22-2 (2023) (opining that a judge may not concurrently serve on the United States Court of Military Commission Review).

² See Va. JEAC Op. 99-3 (1999) (opining that a retired judge may not solicit contributions for the National Judicial College, except from judges over whom the judge does not exercise supervisory or appellate authority); Va. JEAC Op. 20-3 (2021) (opining that a retired judge serving on the recall list may also serve as an administrative hearing officer conducting Title IX hearings for a private university).

³ An opinion from the highest court in Maryland likewise agreed that an analogous Maryland statute governing pensions for retired judges “does not prohibit a retired judge from practicing law in a jurisdiction other than Maryland.” *Chairman of Board of Trustees v. Waldron*, 401 A.2d 172, 177 (Md. 1979). The Maryland court reasoned in part that, in Maryland, “unless an intent to the contrary is expressly stated, acts of the legislature will be presumed not to have any extraterritorial effect.” *Id.* Likewise, the Supreme Court of Alabama found that retired judges serving part-time on the Supreme Court do not “continue in office” and are not subject to the prohibition on judges practicing law during continuance in office. *Slagle v. Ross*, 125 So. 3d 117, 139-40 (Ala. 2013).

AUTHORITY:

The [Judicial Ethics Advisory] Committee is established to render advisory opinions concerning the compliance of proposed future conduct with the Canons of Judicial Conduct A request for an advisory opinion may be made by any judge or any person whose conduct is subject to the Canons of Judicial Conduct. The Judicial Inquiry and Review Commission and the Supreme Court of Virginia may, in their discretion, consider compliance with an advisory opinion by the requesting individual to be a good faith effort to comply with the Canons of Judicial Conduct provided that compliance with an opinion issued to one judge shall not be considered evidence of good faith of another judge unless the underlying facts are substantially the same. Order of the Supreme Court of Virginia entered April 18, 2019.